IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 544 OF 2007

MissKalpana Shamji Shah ....Petitioner.
V/s
The Municipal Corpn. Of Greater Mumbai & Ors.... ....Respondents.

Mr.J.Rais i/by Mr.J.J.Shah, Adv. For the petitioner.

Ms.Nisha Dbhade, Adv. For respondent No.1.
Mr.Induprakash i/by Mr.C.K.Tripathi, Adv. For respondent Nos. 2 & 3.
Mr.Tejus Vora, Adv. For respondent No.4.

CORAM: A.P.DESHPANDE, J.
17/7/07

PC:

The petitioner is a member of respondent No.4-Society. The premises on the basement has been allotted to respondent Nos. 2 and 3 for storage. Contrary to the allotment the respondents 2 and 3 have converted the basement into commercial premises. Aggrieved thereby the present petitioner filed LC Suit No.1014/04 against against the respondents. During pendency of the said suit, according to the petitioner some illegal construction was made in the basement by constructing partition wall hence another suit bearing No.5075/04 was filed. A notice of motion was taken out seeking interim relief in Suit No.5075/04 and during the course of hearing the Advocate for respondent No.1-Municipal Corporation informed that they have already initiated action under section 354A of the Bombay Municipal Corporation Act and under section 53 of the Maharashtra Regional Town Planning Act. On the said statement made by the counsel for respondent No.1 notice of motion came to be dismissed and advocate for respondent No.1 was directed to supply copy of notices purported to have been

issued under the above referred provisions. According to the petitioner, the petitioner for the first time learnt about issuance of notices dated 4.12.03 and 12.7.04 when notice of motion was argued before the City Civil Court in Dec. 2004 and the petitioner received copies of the notices in January, 2005. On coming to know of the fact of issuance of notices, the petitioner-plaintiff moved an application seeking amendment of the plaint with a view to bring subsequent events on record in relation to issuance of notices. The amendment application moved by the plaintiff-petitioner has been rejected by the impugned order and aggrieved thereby present writ petition has been filed.

2. The suit has not reached the stage of trial. The amendment application has been rejected on two grounds viz. (i) that the notice under section 354A of the Bombay Municipal Corporation Act is dated 4.12.03 whereas the suit is filed on 21.2.04. Holding that the notice has been issued even before filing of the suit, the same does not constitute a subsequent event; and (ii) Notice dated 13.7.04 issued under section 53 (1) of the Maharashtra Regional Town Planning Act is addressed to one Navin P. Shah and he is not party to the suit and has no concern with the subject matter of the present suit. Learned counsel for the petitioner has submitted that the rejection of the application on the above stated grounds is patently illegal, in as much as, the trial Court failed to consider that the petitioner received knowledge of the notice dated 4.12.03 when notice of motion was argued in the other suit sometime in December, 2004 and the petitioner received copies thereof in January, 2005. Thus according the learned counsel the reason assigned by the trial Court is wrong. In regard to second ground relied upon by the trial Court for rejecting the amendment application that the notice dated 13.7.04 is addressed to one N.P.Shah it is pointed out that N.P. Shah is the predecessor-in-title of respondents 2 and 3 and is son of respondent

No.2 and brother of respondent No.3. My attention is also invited to the notices dated 4.12.03 and 13.7.04. Same do prima facie appear to be in relation to the suit premises and notices categorically mention "to stop misuse of basement." Thus it is crystal clear that the notices in question relate prima facie to the suit property and N.P.Shah is not a third party but he is predecessor-in-title of respondents 2 and 3. The rejection of application for amendment is based on incorrect factual premise and thus is likely to result in miscarriage of justice. If the amendment application is allowed the same will not cause any prejudice to the respondents as they can contest legality and validity of the notices issued by the Corporation. Learned counsel for the respondents has vehemently opposed amendment to the prayer clause by contending that the same would result in permitting claim of relief for which a cause of action did not arise at the time of filing of the suit but it occurred during pendency of the suit and thus the amendment to the extent it relates to the insertion of prayer clause (bi) the same should not be permitted as the same is likely to change the nature of the suit as well. Learned counsel for the petitioner submits that in view of existing prayer clause (b) in the suit he is not pressing the amendment to the prayer clause as was sought by insertion of prayer (bi). In view of the statement made by the learned counsel for the petitioner that he is not claiming amendment to the prayer clause the proposed amendment for insertion of prayer clause (bi) is rejected as not pressed. However as in my opinion, cause of justice would advance by permitting the amendment to the extent it seeks inclusion of paras 14(a), (b) and (c) I proceed to allow the same. In the result writ petition is partly allowed. In the result writ petition is partly allowed. Impugned order passed by the City Civil Court is quashed and set aside. Amendment application filed by the plaintiff is allowed to the extent it seeks to insert paras 14(a)(b) and (c). However addition of

prayer clause (bi) after prayer clause (b) in the plaint is rejected as not pressed.

17.7.07